



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2003-2004

March 3, 2005

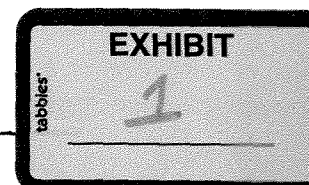
James E. Davis
Milwaukee Public Schools
5225 West Vliet Street
P.O. Box 2181
Milwaukee, WI 53201-2181

Re: Applicant Name: Milwaukee Public Schools
 Billed Entity Number: 132882
 471 Application Number: 360352
 Funding Request Number(s): 1042817
 Your Correspondence Dated: October 3, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision regarding your appeal of SLD's Year 2003 Funding Commitment Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

Funding Request Number: 1042817
Decision on Appeal: **Approved, Funding Denied**
Explanation:

- In accordance with the FCC decision in the matter of Iroquois West School District 10 (DA-05-54), your appeal has been approved. However, funding has been denied for the reasons cited below.
- As part of the E-Rate Selective Review Information Request, Milwaukee Public Schools ("MPS") was requested to provide a copy of all contracts or agreements related to each of your Forms 471, or an explanation for a lack contracts or agreements. In correspondence dated May 12, 2003, you subsequently advised "[t] he district has not awarded any contracts to any of the recommended vendors." You further advised that "[u] pon approval of the requested budget, contracts...will be presented to the Board."



- In correspondence dated July 18, 2003, SLD again requested that you provide a copy of all contracts or agreements related to each of your Forms 471. Given your previous response, SLD also requested that you provide a legal opinion explaining the basis for any legal obligation with the relevant service providers. In correspondence dated July 23, 2003, you indicated the following information as a basis of legal obligation. First, at July 22, 2003 meeting, the District Board of School Directors Finance Committee "approved administration requests to enter into contracts with the recommended vendors for E-Rate related project[s]." A copy of a Table of Contents for the Committee's meeting was included. Secondly, in an E-mail List Serve dated March 24, 2003, "vendors responding to the E-Rate related RFPs/bids and Forms 470" were advised "of the 'Intent to Award.'" A copy of an e-mail delineating certain RFP numbers and associated vendors was included. This e-mail indicated "that the actual award of contract is based on a funding commitment from the Schools and Libraries Division and approval by the Milwaukee Board."
- In correspondence dated July 24, 2003, SLD requested you explain how agreements were secured with the vendors at the time of the filing of the Forms 471. SLD also requested that if the agreements were verbal, that a legal opinion be provided advising why you believed legal obligations were in effect. In correspondence dated July 25, 2003, you subsequently stated that "[t]he various Vendors...were advised verbally and via an e-mail listserv as to who was the recommended Vendor." In this correspondence, you included additional detail of the aforementioned Finance Committee meeting of July 22, 2003, in which an administration "request for authorization to enter into contracts contingent upon approval of the E-Rate Program for funding" was indicated.
- SLD has determined that, at the time you submitted your Form 471 application, you did not have a legally binding agreement in place with your service provider(s). FCC rules require that a completed FCC Form 471 may be submitted to the Administrator "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The Commission has consistently upheld SLD's rejection of an application because there was no binding contract in place for the funding requested.¹ FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had a legally binding agreement in place. Consequently, SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or

¹ *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, DA 03-3526, 18 FCC Rcd. 22,994 (2000).

² See *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2003) at page 20.

postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company